

***United States Court of Appeals  
for the Second Circuit***



**APPELLEE'S BRIEF**





# 77-1062

To be argued by  
ROBERT N. SHWARTZ

## United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket Nos. 77-1062, 77-1100

UNITED STATES OF AMERICA,

*Appellee,*

—v.—

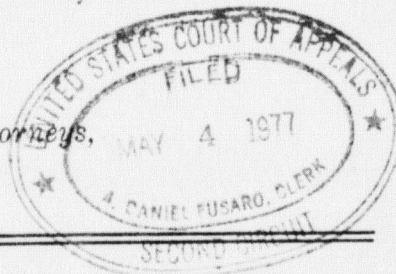
GINO REDA and LOUIS REDA,  
*Defendants-Appellants.*

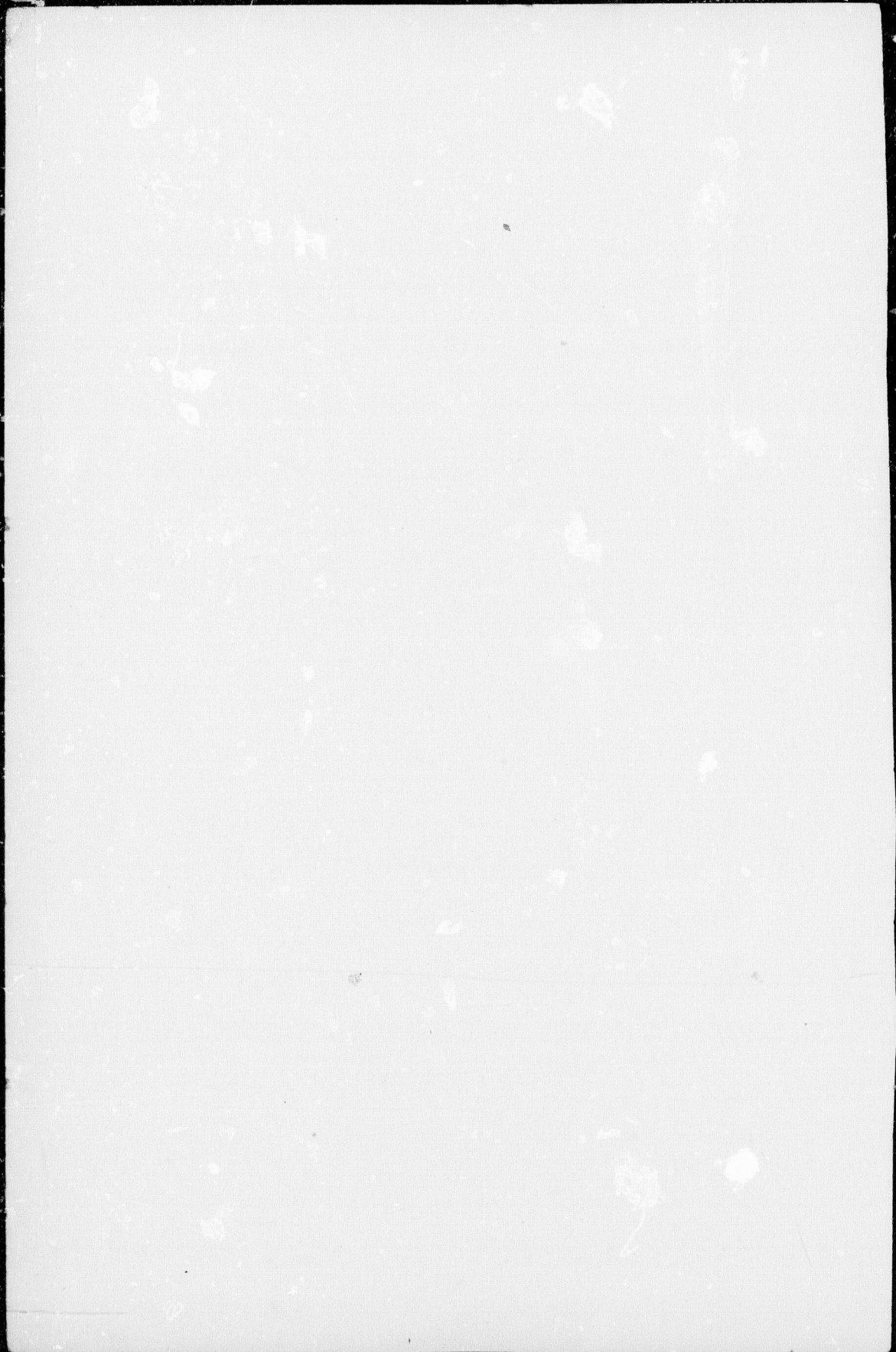
ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

### BRIEF FOR THE UNITED STATES OF AMERICA

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UNITED STATES OF AMERICA,

*Appellee,*

—v.—

GINO REDA and LOUIS REDA,

*Defendants-Appellants.*

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### BRIEF FOR THE UNITED STATES OF AMERICA

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#### Preliminary Statement

Gino Reda and Louis Reda appeal from judgments of convictions entered on January 7, 1977, and February 16, 1977, respectively, in the Southern District of New York, following separate and joint jury trials before the Honorable Charles E. Stewart, United States District Judge.\*

Indictment 76 Cr. 873, filed September 3, 1976, charged Gino Reda and Louis Reda in four counts with

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\* The defendants were originally scheduled to be tried jointly. However, in his pre-trial motions, Louis Reda moved to sever his case on the ground that he intended to call Gino Reda, his father and co-defendant, as a witness who would offer testimony exculpating him. Gino Reda also filed an affidavit stating that he would only testify at a separate trial of his co-defendant and that he would not testify at a joint trial. On October 22, 1976, Judge Stewart, having conducted a hearing on the matter, granted Louis Reda's motion for a severance.

violations of the federal narcotics laws. Count One charged the defendants with a conspiracy to possess and distribute cocaine, a narcotic controlled substance, in violation of Title 21, United States Code, Section 846. Count Two charged the defendants with distributing 0.69 grams of cocaine hydrochloride on August 24, 1976. Counts Three and Four charged the defendants with possessing with intent to distribute approximately one-half pound and one pound, respectively, of cocaine hydrochloride on August 26, 1976, in violation of Title 21, United States Code, Sections 812, 841(a) (1), 841(b) (1) (A), and Title 18, United States Code, Section 2.

On November 4, 1976, trial commenced for a second time\* as to Gino Reda and concluded on November 15, 1976, when the jury found him guilty on Counts One, Three, and Four, but was unable to reach a verdict as to Count Two.\*\* On December 7, 1976 Judge Stewart, upon a motion by the Government, joined Gino Reda to stand trial on Count Two with Louis Reda.

On December 17, 1976, trial commenced as to Louis Reda and Gino Reda, and on December 30, 1976 the jury found Louis Reda guilty on Counts One and Four, and not guilty on Counts Two and Three. Gino Reda was found guilty on Count Two. On January 7, 1977, Gino Reda was sentenced on each count to three years' imprisonment followed by three years' special parole, to run concurrently. On February 16, 1977, Louis Reda was

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\* The first trial began on November 3, 1976. A mistrial was declared on the following day upon the defendant's motion when the first Government witness, John Tufo, stated during cross-examination that his life had been threatened. Prior to the trial, Tufo had been placed in the Witness Protection Program.

\*\* During his trial, Gino Reda testified on his own behalf notwithstanding the various affidavits and papers to the contrary which had been filed by both defendants.

sentenced on each count to a term of two years' imprisonment, the execution of which was suspended except for four months, and he was placed on probation for twenty months to run concurrently with a three year special parole term.

Gino Reda is currently in custody serving his sentence. Louis Reda is at liberty on bail continued by Judge Stewart at the time of sentencing.

### **Statement of Facts**

#### **The Government's Case**

The Government's proof at trial\* revealed the inner workings of a narcotics conspiracy that was responsible for transporting cocaine from Florida and distributing it in New York and Boston in the middle part of 1976. The cocaine was brought to New York from Florida by Gino Reda, stored in Louis Reda's apartment in the Bronx and thereafter distributed.

#### **A. The Initial Negotiations**

In the early part of July, 1976 John Tufo met Gino Reda at the Famous Diner in the Bronx where Tufo, who had known Gino Reda for approximately twenty years, asked him if he could obtain some "material" (cocaine and marihuana) from the South and bring it up North. Gino Reda replied that he could do it if there would be cash available on its delivery. A few days later, July 8, 1976, Tufo went to the Drug Enforcement Administration (DEA) office in New York City where he met with Special Agents Daniel Fernandez and John

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\* The evidence at Gino Reda's trial and the subsequent joint trial was substantially identical.



Reape and agreed to become an informant. (G. Tr. 21-24; L. Tr. 57-59, 62-63). \* Tufo admitted on cross-examination that part of his reason for becoming an informant for the DEA was his belief that Gino Reda had provided information instrumental to his own arrest for robbery in 1965. (G. Tr. 62-64, 70-75).

On July 23, 1976, and while at the DEA offices in New York, Tufo made a telephone call to Gino's residence in Florida. (GX 15). \*\* During the conversation which was tape recorded, the two men discussed whether Gino could bring some material up North. Gino stated that "he was trying to put something together" but that a man named Bruce had him "hung up again." \*\*\* Before

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\* For the sake of clarity this brief will hereafter refer to Gino Reda as "Gino" and Louis Reda as "Louis".

Page references to the official transcript of Gino's trial are abbreviated "G. Tr.", and to the transcript of Louis and Gino Reda's subsequent joint trial are abbreviated "L. Tr." "G. Tr." refers to Gino Reda's brief on appeal and "L. Br." refers to Louis Reda's brief on appeal. Government Exhibits are referred to as "GX." The Government Exhibits were identical in the two trials with only one notable exception: GX 14A, a "theme" notebook, was admitted for a limited purpose at Gino's trial, but not at the joint trial.

\*\* The telephone call was made to number (305) 963-5055. Toll records of the Southern Bell Telephone Company showed that the number was assigned to Gino Reda, 3730 Southwest Terrace, Hollywood, Florida. (G. Tr. 15-16; GX 20, 20A; L. Tr. 128-29; GX 20, 20A, 20B).

\*\*\* Bruce was named as an un-indicted co-conspirator. Tufo testified that Bruce was one of Gino's customers in Boston, Massachusetts. (G. Tr. 29; L. Tr. 71). Tufo's knowledge of this fact derived from events on May 15, 1976 when Gino gave him a package containing 5 to 10 ounces of cocaine and instructed him to deliver it to Bruce in Boston. Gino then drove Tufo to LaGuardia Airport where Tufo boarded a shuttle flight to the Boston airport. There, he registered in the Logan Hilton Hotel. (GX 30). A few hours later an associate of Bruce arrived, picked up the package, and left the room. A short time later, the man returned to the room and gave Tufo \$10,000 in cash which Tufo took back to the Bronx and gave to Gino. (L. Tr. 243-49; GX 30).

the end of the conversation, Tufo agreed to meet Gino at LaGuardia Airport. Later that same evening, Tufo met Gino, who was carrying a black attache case, at the airport and drove him to Louis' house at 1910 Hone Avenue in the Bronx.\* During the drive to Louis' house, Gino told Tufo that he could supply the "material" if the cash was available. (G.Tr. 24-32, GX 15, 15A; L.Tr. 63-73, GX 15, 15A).

#### **B. Gino's Attempted Sale of One Ounce of Cocaine**

Approximately a week later on July 31, 1976, Gino made a telephone call to Tufo who was then staying at a friend's house. At that time, Gino told Tufo that he had an ounce of cocaine available, and that he wanted to know if Tufo knew anyone who wanted to buy it. On the following day Tufo telephoned Gino at Louis' house \*\* and advised him that there were no buyers available.\*\*\* (G.Tr. 32-34; L.Tr. 74-76).

#### **C. The Introduction of the Undercover Agents**

On August 18, 1976, Tufo telephoned Gino at Louis' house and told him that he had two "buyers" for the cocaine.\*\*\*\* Gino agreed to meet them at the Castle Hill

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\* Agents Fernandez and Reape observed this airport meeting. (G. Tr. 212-13; L. Tr. 257-58).

\*\* Tufo testified that he made the call to telephone number 824-0911. (G. Tr. 33; L. Tr. 75). New York Telephone subscriber and toll records indicated that telephone number (212) 824-0911 was assigned to Louis Peter Reda in a second floor rear apartment located at 910 Hone Avenue, Bronx, New York. (G. Tr. 439-46; GX 19A; L. Tr. 135-41; GX 19, 19A).

\*\*\* Tufo was unable to contact Agents Fernandez and Reape over the weekend. (L. Tr. 76).

\*\*\*\* The "buyers" were, of course, Daniel Fernandez and John Reape, DEA undercover agents.

Diner. Minutes later, Tufo met Gino at the diner where they were joined by Special Agents Fernandez and Reape. After introductions were made by Tufo, the four men moved to the rear of the diner where they sat at a table to discuss Gino's sale of cocaine. During the conversation, Fernandez told Gino that they were interested in purchasing four pounds of cocaine. Gino informed them that he was capable of selling them any amount of cocaine—from one to fifty pounds—and that four pounds would be no problem at all. Gino further stated that he lived in Florida, where he had a partner and a supply of cocaine, and that he stayed in his son's house in the Bronx; that the cocaine he and his partners were selling was from Bogota, Columbia and Bolivia; that the cost per pound of cocaine would be \$24,800 or, a breakdown price of \$1550 per ounce, which he had to confirm with his partner; that he could supply them with a sample; and, that the cocaine available was in "rock" form mixed with powder and was of the highest quality.\* Gino continued to say that he would only deliver one pound of cocaine at a time but that he would supply the four pounds in four different deliveries within minutes. With respect to the amount of money involved, Gino stated that he had sold large quantities of cocaine and marihuana in the past for as much as \$250 to \$300,000, and that he had developed good regular customers who would on occasion pay in advance of delivery. Moreover, Gino indicated that he was also in the business of selling marihuana in bulk quantities of one and two thousand pounds and that, at that time, he was presently expecting a ship to deliver 250,000 pounds of marihuana in Florida. Consequently, Gino asked if they were interested

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\* Fernandez explained that "rock" cocaine is a term describing high quality compressed cocaine which is used at the distributor level when it is broken into a powder. (G. T. 217-18; L. Tr. 282-84).



in buying bulk quantities of marihuana. Gino also stated that his son, Louis, had lost 2,000 pounds of marihuana in Florida, where Louis was arrested by the state police in March, 1976.\* Finally, as the four men left the diner, Gino instructed his prospective buyers to take down the numbers of the public telephones situated in front of the diner and to call him there at 7:30 that evening, at which time he would confirm and relay the final arrangements for the price and delivery of the cocaine. (G.Tr. 34-37, 213-22, 594; L.Tr. 76-83, 259-61, 273-86).

Later that evening Fernandez made a telephone call to the public phone in front of the diner and spoke to Gino. The call was recorded at DEA headquarters. (GX 16). In that conversation Gino reiterated most of the conversation that occurred earlier that day in the diner. Thus, Gino agreed to sell four pounds of cocaine and restated the price of \$24,800 per pound or \$1,550 per ounce for the cocaine. (G.Tr. 222-29; L.Tr. 286-90; GX 16, 16A).

#### **D. Tufo's Meeting with Gino at Louis' Apartment**

On August 23, 1976 Tufo called Gino at Louis' apartment. Gino suggested that he come over to finalize the arrangements for the cocaine delivery. Tufo went to Louis' apartment and met with Gino and Louis in the kitchen.

While the three men were in the kitchen Gino stated that he had a pound of cocaine. At this time Gino proceeded to remove a brown cardboard box (GX 2C) from a kitchen shelf and took out from the box three glassine

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\* This testimony was not permitted at the joint trial. (L. Tr. 80-81). See p. 26 n.\*\* *infra*.

envelopes containing rock and powder cocaine. Gino then placed the three bags of cocaine inside his black attache case (GX 14) and made a telephone call to Reape.\* The telephone call received by Special Agent Reape at an undercover telephone at DEA was recorded. (GX 17). In that conversation Gino reiterated the price of \$24,800 per pound and much of what he had previously told them on August 18, 1976. He also stated that he wanted to make the transaction that same evening. However, Reape told Gino that he did not have the money available that evening. Gino agreed to meet at noon on the following day at the Castle Hill Diner to deliver a sample of cocaine and the subsequent delivery of the pound of cocaine. After the phone call, Gino and Tufo made arrangements for the following day's delivery of cocaine. Louis was present in the same room to hear and see everything that happened: the examination of the cocaine and its removal to the black attache case, the telephone call to Reape to make arrangements to deliver a sample at the diner and the discussion to arrange for delivery the next day. (G. Tr. 40-46, 462-64; GX 2C, 14, 17, 17A; L.Tr. 83-91; 98-99; 511-16; GX 2C, 14, 17, 17A).

#### **E. Gino's Delivery of a Sample with Louis Acting as Lookout**

On the following day, August 24, 1976, Tufo picked up Gino at Louis' house and drove him to the Castle Hill Diner where they waited for the agents. After the agents failed to appear for the noon appointment, Gino instructed Tufo to drive him back to Louis' house. Tufo then returned to the diner and subsequently met with

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\* Tufo had given Gino the undercover telephone number of the special agents at DEA headquarters. (G. Tr. 43).



Fernandez and Reape who had been delayed by traffic.\* At this time Tufo telephoned Gino and advised him that the buyers had arrived and were waiting by the diner. Gino stated that he would leave for the diner. A few minutes later, Gino left Louis' house and drove to the diner in a green Cadillac with a white top and Florida license plates. As Gino entered the parking lot behind the diner, he motioned to Tufo, who was standing in front of the diner with the undercover agents, to meet with him in the parking lot. Tufo walked over to Gino's car at which time Gino handed him a red Marlboro cigarette box containing the sample of cocaine. (GX 1).\*\* Gino instructed Tufo to tell the agents that he, Gino, would telephone them around 3:00 to 3:30 in the afternoon. Gino then drove away and Tufo walked back to the front of the diner, gave the Marlboro box to the agents, and informed them that Gino would be calling them later in the afternoon.\*\*\* At about this time Tufo, Fernandez and Reape and several surveillance agents saw Louis driving a yellow Cadillac with a white top and Florida license plates. As Louis drove by the diner, he slowed down to 5-10 m.p.h., leaned over and looked at the

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\* Prior to leaving DEA offices, Daniel Fernandez was outfitted with a kel recording device on his person to record the conversations (GX 18) with Gino Reda during that afternoon. John Reape also secured \$24,800 in Official Advanced Funds for the transaction. (G.Tr. 234-36, GX 18, 18A; L.Tr. 319-20, GX 18, 18A). Additionally, other agents were assigned to monitor the conversation between Gino and the agents and to conduct surveillance of Gino. (G. Tr. 613-19, 635-40; L. Tr. 653-60, 677-86, 695-702).

\*\* The cocaine was determined upon analysis to weigh .69 grams with a potency of 57% cocaine hydrochloride and the balance mannitol. (G. Tr. 669; GX 1; L. Tr. 429-30, GX 1).

\*\*\* Since Gino was going to call the buyers at the DEA undercover telephone, Special Agent Fernandez telephoned his secretary and informed her to advise Gino that the buyers were still in front of the diner. (G. Tr. 239-40; L. Tr. 328-29).

three men in front of the diner and then accelerated away from the area. Tufo then departed and the buyers waited in the vicinity of the diner. (G. Tr. 46-50, 233-39, GX 1, 18, 18A; L.Tr. 99-105, 319-28, GX 1, 18, 18A).

Later that afternoon at approximately 3:30, Gino telephoned the agents in front of the diner. Fernandez told him that they were satisfied with the sample. Gino then responded that he would meet with them. A few minutes later, Gino arrived at the diner and discussed with them the method for delivery of the remaining pound of cocaine. It was during this conversation that Gino told the agents that they could inspect the cocaine in Louis' apartment. Further, Gino stated that if it was agreeable with them, Louis could have his wife and children leave the apartment so that the delivery could be made there. As an alternative, Gino suggested that Louis could sit with one of them in their car while the other buyer went up to the apartment to check the material. If the buyer was satisfied, Gino continued to say, then Louis could take the money from them and bring it to the apartment. The negotiations for the delivery continued at Rhoda's, a nearby bar. There, Gino proposed and agreed to make the delivery in front of St. Raymond's Church on Castle Hill Avenue. Gino then left the bar and drove to Louis' house. A short time later, he drove back to the area in front of the church where he double parked next to the agents' car. Gino informed the agents that his partner did not want Gino to make the delivery but, rather, wanted Tufo to conclude the final transaction. At this time, Gino and the undercover agents continued their negotiations and Gino decided that he would try again to get his partner's approval for a release of the pound of cocaine. Prior to leaving, Gino told them that he would meet them in the same place. Gino then drove back to Louis' house and entered the premises.



A short time later, Louis and Gino walked out of 1910 Hone Avenue. Louis was carrying the black attache case. (GX 14).<sup>\*</sup> The two men walked over to Louis' car, a yellow Cadillac. Louis opened the trunk of his car and placed the black attache case inside. Louis then got into the yellow Cadillac and Gino got into his green Cadillac.<sup>\*\*</sup> Both men then drove up Hone Avenue, made a right onto Neal Avenue, then made a U-turn and drove down Neal to a Getty gas station where Louis parked and secured the yellow Cadillac, leaving the attache case in Louis' locked trunk. Louis and Gino then returned to 1910 Hone Avenue where Louis exited the vehicle. Gino then drove back to Castle Hill Avenue and met Fernandez and Reape in front of the church. There, Gino told the special agents that his partner would not release the cocaine for the final delivery until Tufo returned. He also stated that since he was nervous he was going to have "eyes"—referring to Louis—for protection and to look out for his interests. Negotiations continued for Gino to deliver the package and he agreed to make a last attempt to obtain his partner's approval for the release of the cocaine. Gino then left

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<sup>\*</sup> Tufo testified that cocaine was kept in the black attache case. (G. Tr. 42-43; L. Tr. 86-87, 110). Agent Korniloff testified that Louis carried the attache case. (L. Tr. 702). Agent Logan testified that he thought Gino was carrying it. (L. Tr. 683). At this stage the Government is entitled to the most favorable inference, although even the least favorable inference establishes Louis' constructive possession. *Glasser v. United States*, 315 U.S. 60, 80 (1942).

<sup>\*\*</sup> The automobile registration records for the Division of Motor Vehicles of the State of Florida showed that Louis P. Reda owned and had registered a yellow Cadillac (GX 23), and that Gino Reda had similarly owned and registered a green Cadillac. (GX 24). Both men had given their addresses as 3730 SW 45th Terrace, Hollywood, Florida on their respective automobile registrations. (G. Tr. 682-84; L. Tr. 790).

the area and drove back to Louis' house. A short time later he returned to meet the agents. Gino informed them that his partner would not let him release the cocaine. Negotiations continued and Gino then asked the buyers if they were interested in buying some marihuana in bulk quantities. At this point the discussions ended and both parties left. (G. Tr. 240-46, 466-79, 634-40; GX 1, 18, 18A, 23, 24; L. Tr. 29-41, 518-36, 677-85, 698-702; GX 1, 13, 18A, 23, 24).

#### **F. Gino's Arrest**

On the following day, August 25, 1976, Tufo telephoned Gino who stated that he did not want to sell the cocaine to Fernandez and Reape because he feared a "rip off", but, that he was going to sell it in Boston or, send it back to Florida via the Eastern Sprint, which is a mail and delivery service provided by Eastern Airlines. (G.Tr. 51; L.Tr. 109). After speaking to Gino, Tufo called the agents and informed them about Gino's plans. That evening the agents obtained arrest warrants for Louis and Gino and a search warrant for the 1910 Hone Avenue apartment. (G.Tr. 51-52, 247, 482; L.Tr. 107-110, 350).

During the morning of August 26, 1976, surveillance agents observed Gino leaving Louis' house carrying a brown box and entering his green Cadillac. Gino, after making a stop in a store, proceeded to drive to LaGuardia Airport. After Gino parked his car he proceeded to walk towards the air terminal carrying a brown box. At that time, Agents Kennedy and Forget arrested him. Kennedy seized the brown box. (GX 2C). Shortly thereafter when the agents were at the United States Attorney's



office, Kennedy opened the box and removed a white plastic bag containing approximately one-half pound of cocaine (GX 2),\* a small note rolled with \$1,050 (GX 2A), and, a second note rolled with \$300 (GX 2B).\*\* (G. Tr. 619-24; GX 2, 2A, 2B, 2C; L. Tr. 661-67; GX 2, 2A, 2B, 2C).

### G. Louis' Arrest

Early that same afternoon, agents of the DEA arrested Louis outside his residence and, subsequently, read and advised him of his Miranda rights. (L. Tr. 550-52, 617; GX 35). The agents then informed him of the search warrant for his apartment. Louis stated that he had no keys for his own apartment. The landlord

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\* The cocaine was analysed as weighing 222.04 grams with a potency of 71% cocaine hydrochloride and the balance mannitol. (G.Tr. 670-71, GX 2; L.Tr. 431-33, GX 2).

\*\* The notes which Gino admitted writing (G. Tr. 768-69) read as follows:

"½ oz.	\$ 700
Old debt	400

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Total	\$1,100
Dee	50
Total	1,050

Add the \$50—you have Dee, and give Richard the above as explained here.  
(over)"

"This package is 8 oz. so now I'm holding 7½ ozs. as I gave Rich for ½ oz. as explained in the other side. Please verify with him." (GX 2A).

"\$250  
FOR YOURSELF  
&  
GIVE \$50  
TO ROE IF  
SHE IS IN NEED." (GX 2B).

provided a set upon presentation of the search warrant. (L. Tr. 616-17). Prior to the search and after Louis was advised of his rights, Agent Reape asked him if there was any cocaine or narcotics in the apartment. Louis said that there was none; that he knew of no cocaine present in the apartment. (L. Tr. 552-53). During the search, Agent Fernandez went to a closet near the kitchen and seized a black attache case (GX 14) which he opened with a key (GX 21) seized from Gino at the time of his arrest at the airport. Inside the black attache case the agents seized a "theme" notebook (GX 14A),\* an "idea" notebook (GX 14B),\*\* two roundtrip plane tickets under the names of G. Reda and D. Bischoff from Miami to Bogota to Miami (GX 14C and 14D, respectively), a large manila envelope (GX 14E),\*\*\* and various travel

\* The "theme" notebook contained in specific detail a plethora of narcotics transactions and an equally large number of accounting details concerning moneys received and owed. Appearing in the book were the names "Dee", Dolores, Bruce, "Rich" and Richard. (GX 14A). During Gino's trial, the trial court first admitted the notebook into evidence and then rescinded the ruling. However, during cross-examination of Gino, the trial court admitted the notebook into evidence for credibility purposes. Gino testified that the book belonged to Louis. (G. Tr. 827). Nevertheless, during the course of the joint trial the trial court refused to allow the notebook into evidence on the grounds that it was "prejudicial" even though the Government was prepared to prove through the testimony of a handwriting expert that both Gino and Louis wrote the entries contained in the exhibit.

\*\* The "idea" notebook contained more numerical entries and the name "Felipe Portocarreros" with an address in Bogota, Colombia. (GX 14B).

\*\*\* The large manila envelope read:

"FROM LOUIS REDA 1019 HONE AVE BX  
EASTERN SPRINT  
FL # 747 LEAVES LAG 12:30 PM  
ARRIVES FT LAUD 309  
TO GINO REDA  
3730 SW 46TH TERRACE  
HOLL FLORIDA  
HOLD WILL PICK UP" (GX 14E).



brochures to Colombia, Peru, Bolivia and other South American countries, flight schedules for Eastern and Delta Airlines, and a large number of Eastern air shuttle passes between New York and Boston (GX 14F). Also found inside the attache case were three clear plastic bags containing cocaine. (GX 3, 4, 5).<sup>\*</sup> Moreover, the agents seized a large hi-beam centigrade scale (GX 9) from the top of the refrigerator in the kitchen, a jar of lactose (GX 11) from a kitchen cabinet and a Hanson dietetic scale (GX 10), a blue address book (GX 12), and a roll-o-dex of telephone numbers (GX 13)<sup>\*\*</sup> from a closet. During the seizure of the items, Louis was shown two of the three bags of cocaine (GX 3 and 4) at which time he stated that he did not know how they got there. Similarly, when shown the large hi-beam centigrade scale (GX 9) and the jar of lactose (GX 10), Louis stated that he never saw them before and did not know how they got in his apartment. (G.Tr. 247-52, 481-92, 646-57; GX 3, 4, 5, 9, 10, 11, 12, 13, 14, 14A, 14B, 14C, 14D, 14E, 14F, 21; L. Tr. 368-86, 545-55, 614-23; GX 3, 4, 5, 9, 10, 11, 12, 13, 14, 14B, 14C, 14D, 14E, 14F, 21, 35).

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<sup>\*</sup> The chemical analysis revealed that the first bag (GX 3) weighed 221.63 grams with a potency of 61% cocaine hydrochloride and the balance mannitol; the second bag (GX 4) weighed 6.45 grams with a potency of 28% cocaine hydrochloride and the balance inositol and lactose; and, the third bag (GX 5) weighed 124.42 grams with a potency of 29% cocaine hydrochloride and the balance lactose, mannitol, and borates. (G. Tr. 672-75; GX 3, 4, 5; L. Tr. 434-38; GX 3, 4, 5).

<sup>\*\*</sup> Several of the names appearing in the address book and the roll-o-dex are in the "theme" notebook. (GX 14A). The telephone toll record for Louis' New York number (GX 19A) for July and August 1976 reflect that the telephone numbers of these same people were called with great frequency.

### **The Defense Case**

At his separate trial, Gino testified in his own behalf, attempting to establish an entrapment defense. Gino stated that everything he did and said was done as a favor to Tufo after much nagging and cajoling on Tufo's part. (G. Tr. 742, 745-47). Gino testified that he never called Tufo on July 31, 1976 seeking a buyer for one ounce of cocaine. (G. Tr. 743). Gino further testified that at the August 23, 1976 meeting in Louis' kitchen, Tufo brought the cocaine. (G.Tr. 750). Gino also denied that he ever gave Tufo a sample of cocaine in a Marlboro pack for Agents Fernandez and Reape. (G.Tr. 756-57). The defense argued to the jury that Gino had been framed by Tufo in revenge for a suspected double-cross by Gino 11 years earlier.

At the joint trial neither defendant offered any evidence.

### **ARGUMENT**

#### **POINT I**

#### **There Was More Than Sufficient Evidence Against Louis Reda.**

Louis Reda contends that the evidence was insufficient to establish that he "knowingly participated in an unlawful conspiracy (Count I) and possessed cocaine (Count IV)." (L. Reda's Br. 14). This contention is without merit.

The Government's proof more than met the standard required under the precedents of this Court cited by the appellant.



"In determining whether to submit a criminal case to a jury, the court must determine whether upon the evidence taken as a whole, a reasonable mind might fairly conclude that the defendant was guilty beyond a reasonable doubt *United States v. Taylor*, 464 F.2d 240 (2d Cir. 1972)." *United States v. Wiley*, 519 F.2d 1348, 1349 (2d Cir. 1975).

The direct and circumstantial evidence, viewed in the light most favorable to the Government, *Glasser v. United States*, 315 U.S. 60, 80 (1942), establishes Louis Reda's knowing participation in the charged cocaine conspiracy (Count I) and his possession of the cocaine found in a black attache case in his apartment (Count Four). On the conspiracy count, the Government need only have shown "a likelihood of illicit association" between Louis Reda and the co-conspirators, since there was no serious question that Gino Reda was involved in a cocaine conspiracy. *United States v. Mejias*, Dkt. No. 76-1384, slip op. 2269, 2289 (2d Cir. March 10, 1977); *United States v. Calabro*, 449 F.2d 885, 891 (2d Cir. 1971), cert. denied, 404 U.S. 1047 (1972); *United States v. Ragland*, 375 F.2d 471, 477 (2d Cir. 1967), cert. denied, 390 U.S. 925 (1968).

The evidence established that Louis Reda resided at 1910 Hone Avenue in the Bronx and that Gino Reda spent almost every weekend there. The jury could reasonably infer from all of the circumstances that Gino's visits to Louis were to further their Florida-New York cocaine conspiracy.

On the evening of August 23, 1976 John Tufo visited 1910 Hone Avenue and met with Gino and Louis Reda in the kitchen. While Louis sat at the table reading a racing form, Gino and Tufo discussed the pending cocaine negotiations. Gino took down a brown box and

transferred its contents—three bags of cocaine—to the black attache case. Gino and Tufo also spoke on the phone with John Reape, a undercover DEA agent, to arrange for the following day's meeting to provide a sample of the cocaine. Obviously, Louis, who was present throughout this entire meeting in the kitchen, could not plug his ears or shut his eyes to what was going on. The jury could reasonably find from this evidence alone that Louis knew of the pending cocaine negotiation and was aware of the cocaine in the black attache case in his apartment. (L. Tr. 84-99).

Shortly after noon on August 24, 1976 Gino met Tufo in the rear parking lot of the Castle Hill Diner and gave him a sample of cocaine in a Marlboro package. While Gino was delivering the sample, Louis was counter-surveilling the area for his father. Gino drove off as soon as he had given Tufo the narcotics. Tufo joined the agents in front of the diner. A few minutes later Tufo and DEA agents Fernandez and Reape saw a yellow Cadillac drive by the diner. As the car approached, Tufo identified its sole occupant as Louis Reda. Agents Fernandez and Reape as well as other agents on surveillance at that time in the area testified that as the car approached the diner it slowed down to approximately 5 to 10 m.p.h. and the driver leaned out and looked over at them, accelerating back to normal speed only after passing them. (L. Tr. 326-28, 400-01, 521-22, 562-65, 656, 668-70).<sup>\*</sup> The jury was free to draw the inference that Louis' passing by the diner at that exact time and in that particular manner was not coincidental, but rather was a conspiratorial act.

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<sup>\*</sup> Tufo's testimony was not inconsistent with these observations. Tufo said he saw Louis driving by the diner a few minutes after Gino had dropped off the cocaine sample, but turned his back to Louis as he told the agents of Louis' approach in the yellow Cadillac. (L. Tr. 105).



Later that same day Louis was observed leaving 1910 Hone Avenue with Gino. Louis was carrying the black attache case, the same attache case he had seen filled with cocaine the night before. The attache case was put in the trunk of Louis' yellow Cadillac. Then Louis got into his yellow Cadillac and Gino got into his green Cadillac. They then drove to a Getty station by a circuitous and evasive route and parked the locked yellow Cadillac with the attache case containing cocaine. The two cars drove up Hone Avenue and made a right onto Neal Avenue. After proceeding a short distance on Neal both cars made U-turns on Neal and headed in the opposite direction to Bronxdale Avenue and the Getty gas station. Having thus removed the cocaine from the apartment, Gino and Louis drove back to 1910 Hone Avenue where Louis got out. (L. Tr. 683-84, 700-02).

Shortly after Louis' arrest on August 26th, a search warrant on Louis' apartment was executed. Even without the cocaine, paraphernalia and other evidence found in Louis' apartment, Louis' involvement in the cocaine conspiracy is amply established. With these items, the case against Louis becomes almost as overwhelming as the case against Gino. In a closet by the kitchen, the black attache case was found. (GX 14). The attache case was found to contain the cocaine which the jury convicted Louis (and Gino \*) of possessing with intent to distribute under Count Four of the indictment. The agents also found a large centigrade scale on top of the refrigerator (GX 9) and a jar of lactose in a kitchen cabinet. (GX 11). Louis could not help but know about these things openly placed in his own apartment. The agents also seized from Louis' apartment a telephone address book and roll-o-dex containing the names of co-

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\* Gino was convicted of Count Four, as well as Counts One and Three at his separate trial.

conspirators and an Eastern Sprint envelope which was used to ship narcotics and cash between Florida and New York. (L. Tr. 618).\*

When asked about the contraband and obvious narcotics paraphernalia found in his own apartment Louis claimed to be ignorant as to how they got into his apartment. Such statements the jury could reasonably have found to be incredible and to constitute false exculpatory statements, evidencing consciousness of guilt, *Wilson v. United States*, 162 U.S. 613 (1896); *United States v. McConney*, 329 F.2d 467, 470 (2d Cir. 1964); *United States v. Lomprez*, 472 F.2d 860, 862-63 (7th Cir. 1972), *cert. denied*, 411 U.S. 965 (1973).\*\*

Louis Reda argues on appeal that this evidence is insufficient and the Government's proof fails to overcome

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\* Judge Stewart excluded a notebook (GX 14A) found with the cocaine in the black attache case seized in Louis' apartment. (L. Tr. 611-12). This notebook kept a running account of various narcotics transactions with several of the unindicted co-conspirators. The Government's offer of proof was that a handwriting expert would testify that at least some of the accounts were kept by Louis. The Court recognized its relevance but excluded it because of the prejudicial impact of so active a narcotics (cocaine and marihuana) conspiracy. The Court excluded the notebook even though the Government offered to redact all but the names appearing in the notebook. The Government believes that Judge Stewart erred in excluding this evidence as discussed more fully below. See p. 26 n.\*\* *infra*.

\*\* Additionally there was the circumstantial evidence provided by Louis' telephone toll records for July and August 1976 (GX 19A) which showed bills for calls between his apartment and the Florida co-conspirators amounting to several hundred dollars. The jury could reasonably infer that the amounts far exceeded any reasonable amount attributable to filial devotion but were the necessary expense of communication between conspirators. The jury could reasonably have inferred that Louis would have to have known of these bills and the purpose of the calls that produced them.



the "single act" rule. The "single act" cases upon which appellant relies are simply inapposite to the facts in this case. *United States v. Aviles*, 274 F.2d 179, 190 (2d Cir.), cert. denied, 362 U.S. 974 (1960); *United States v. Reina*, 242 F.2d 302, 306 (2d Cir.), cert. denied, 354 U.S. 913 (1957). See also *United States v. DeNoia*, 451 F.2d 979 (2d Cir. 1971). In these cases this Court simply recognized that in a broad and encompassing conspiracy a single act of a defendant, standing alone, might not suffice to establish that defendant's knowledge of the charged conspiracy. *United States v. Tramunti*, 513 F.2d 1087, 1111-12 (2d Cir.), cert. denied, 423 U.S. 832 (1975). In this case the charged conspiracy was relatively brief in duration and simple in its organization. Louis' involvement in and knowledge of that conspiracy is evidenced by various occurrences and facts. The evidence hardly suggests that Louis was a peripheral co-conspirator.

The Government, of course, agrees with the appellant that knowledge of, even when coupled with presence at, a crime is insufficient to establish guilt. *United States v. Sisca*, 503 F.2d 1337, 1343 (2d Cir.), cert. denied, 419 U.S. 1008 (1974); *United States v. Cirillo*, 499 F.2d 872, 884-87 (2d Cir. 1974); *United States v. Vilhotti*, 452 F.2d 1186 (2d Cir. 1971), cert. denied, 406 U.S. 947 (1972). But here Louis was not only present when the cocaine was examined and repacked into the black attache case; he participated in the conspiracy and sought to further its goals. He served as "lookout" when his father transferred the sample of cocaine. He knowingly stored the cocaine and the paraphernalia for weighing and cutting the cocaine in his apartment. He actually removed the cocaine from the apartment, locked it in his own automobile trunk and then relocated it so as to avoid detection.

From all of this evidence the standard set forth in *United States v. Geaney*, 417 F.2d 1116, 1120 (2d Cir. 1969), *cert. denied*, 397 U.S. 1028 (1970) requiring a fair preponderance of independent non-hearsay evidence of Louis' membership in the conspiracy is established. Louis Reda's knowledge of the conspiracy's purpose and his participation in that conspiracy are demonstrated by his own behavior in light of all of the circumstances. *United States v. Calabro*, 449 F.2d 885, 890 (2d Cir. 1971), *cert. denied*, 405 U.S. 928 (1972).\*

The *Geaney* threshold having been reached Judge Stewart properly admitted the incriminating hearsay declarations of Gino Reda, Louis' co-conspirator. During the course of the August 24th discussions between Gino and the agents, several methods for executing the cocaine exchange were suggested by Gino. Almost all of them included Louis' direct participation. Gino told the agents that he could call his son and have him clear his wife and three children out of their own home so that the exchange could take place there. When Fernandez and Reape hesi-

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\* Judge Friendly's statement in *United States v. Frank*, 494 F.2d 145, 153 (2d Cir.), *cert. denied*, 419 U.S. 828 (1974), is particularly apposite here:

"In passing on the sufficiency of the evidence the court had only the prosecution's case, the defense having offered none. To be sure, the defendants were not required to testify or to present any case at all, and the jury could not permissibly draw an adverse inference simply from their failure to take the stand. But the self-incrimination clause does not elevate a defendant's silence, much less the failure to present any defense case, to the level of a convincing refutation. When a defendant has offered no case, it may be reasonable for a jury to draw inferences from the prosecution's evidence which would be impermissible if the defendant had supplied a credible exculpatory version . . ." [fn. omitted].



tated about going into a strange house, Gino suggested that Louis would stay downstairs with one agent while the other satisfied himself that the cocaine was genuine. Gino continued that Louis could transport the agent and the cash for the deal. (GX 18; L. Tr. 331-32, 339, 412, 524-26, 530).

In sum, the evidence presented at Louis Reda's trial was more than sufficient for the jury to find Louis Reda's criminal participation in the charged conspiracy and his possession of cocaine with intent to distribute.

## POINT II

### **The Government's Question on Redirect of the Chemist Concerning Tests on Marihuana Was Proper.**

Louis Reda alleges "incalculable" prejudice by the prosecutor's asking the chemist on redirect examination:

"Now did you also conduct a number of examinations on marihuana with respect to this case."  
(L. Tr. 444).

This question hardly rises to the level of reversible error for several reasons. First, the defendant had "opened the door" to such a question by his cross-examination. Second, the question asked caused no prejudice to Louis Reda.

During the trial there was considerable evidence that Gino was in the business of importing, distributing and selling marihuana as well as cocaine. The cocaine and marihuana deals were intimately connected as shown by the fact that Gino tried to sell marihuana to Agents Fernandez and Reape at the same meetings where the

cocaine was discussed. The Government's proof established that the charged conspiracy was operated with a two-product line (cocaine and marihuana). (L. Tr. 59, 72, 277-78, 280, 287-88, 338, 534; GX 16, GX 18).

The Government unsuccessfully sought to introduce several pieces of evidence connecting Louis with his father's marihuana business deals. The Government was denied the right to offer: Gino's statement that Louis had lost 2000 pounds of marihuana in Florida, the "theme" notebook (GX 14A) recording, in Gino's and Louis' handwriting, various narcotics (marihuana and cocaine\*) deals, and evidence of the marihuana found in Louis' apartment at the time of Louis' arrest.

On direct examination Joseph Barbato, a chemist for DEA, testified that he weighed and tested certain packages of what proved to be cocaine. He provided the net weight, gave the strength of the cocaine hydrochloride detected, and identified the adulterants (mannitol, inositol, lactose \*\* and borates) found in each exhibit. (L. Tr. 426-40).

Louis' attorney cross-examined the chemist by asking whether certain objects seized from Louis' apartment (a plastic mat and a vacuum cleaner bag) had been tested for "any narcotic substance." \*\*\* Mr. Barbato answered

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\* The defense argued to the court that the transaction in GX 14A all involved marihuana. The Government contended that the jury could find they involved cocaine as well as marihuana.

\*\* A jar of lactose was found in Louis Reda's kitchen cabinet. (GX 11).

\*\*\* Defense counsel began his cross-examination by asking if cocaine was detected on the scale seized in Louis' apartment. (L. Tr. 441). However, he subsequently broadened his inquiry to whether "any narcotic substance" was found on the plastic mat or vacuum cleaner bag seized in the apartment. (L. Tr. 441-42).



that he had examined these items and found nothing. (L. Tr. 441-42). Defense counsel sought to make two suggestions to the jury through this line of questioning. First, that any cocaine present in the apartment had been kept locked up in the black attache case and never weighed or "cut" in the apartment, thereby rebutting the evidence that Louis knew that cocaine was stored in his apartment. Second, that despite the ample testimony that Gino was involved in a cocaine and marihuana conspiracy (L. Tr. 59, 72, 277-78, 280, 287-88, 338, 534; GX 16, 18), there was no evidence to connect Louis with Gino's cocaine and marihuana dealings.

This second suggestion was false since marihuana had indeed been found in Louis' apartment, although not in or on the items about which defense counsel inquired. It was in the context of correcting that inaccurate impression that the Assistant United States Attorney asked the chemist whether any tests for marihuana had been conducted. Had Mr. Barbato been permitted to answer he would have testified as to marihuana found in the apartment. Having thus "opened the door" to the presence of "any narcotic substance" in Louis' apartment, defense counsel cannot complain that the Government's question was improper on redirect examination. *United States v. Taylor*, Dkt. No. 76-1210, slip op. 2805, 2821 (2d Cir. April 13, 1977); *United States v. Finkelstein*, 526 F.2d 517, 527 (2d Cir. 1975), *cert. denied*, 425 U.S. 960 (1976); *United States v. Tramunti*, 513 F.2d 1087, 1118 (2d Cir.), *cert. denied*, 423 U.S. 832 (1975); *United States v. Gorman*, 355 F.2d 151, 160 (2d Cir. 1965), *cert. denied*, 384 U.S. 1024 (1966).

Appellant suggests that the Assistant United States Attorney asked this question in defiance of an "unequivocal" ruling from the trial judge. (L. Reda Br. 24). This is simply not correct. The court's ruling, cited by

appellant, was both tentative and limited to direct examination.\*

Whether or not Louis Reda's defense attorney "opened the door" on cross-examination for the Government's question on redirect, it is clear that Louis was in no way prejudiced by the question.\*\* Throughout the entire trial,

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\* The court stated in its entirety:

"I understand that's the problem, Mr. Virella, but my feeling at the moment is, and I have thought about this quite a bit; that, first the transactions in Florida, a few months prior to this, are not sufficiently close to what we have here to make them admissible in light of the prejudicial effect that the evidence has. So that I think, and I pretty well have made up my mind, that *at least insofar as your direct is concerned, that I am not going to receive anything which relates to marijuana in Florida. I am also including, not only this notebook, but the marijuana in the apartment.*" (L. Tr. 269). (Emphasis added.)

\*\* On the question of prejudice, it should be noted that Judge Stewart's decision to exclude evidence connecting Louis to his father's marihuana business was a ruling unduly generous to Louis. From the outset of the trial Louis' attorney argued to the jury that Louis knew nothing of his father's narcotics business and had played no part in any conspiracy. (L. Tr. 50-54).

During the course of Louis' trial the Government offered demonstrative and testimonial evidence against Louis under Fed. R. Evid. 404(b) to establish his knowledge of his father's narcotics transactions with Tufo, his association with the conspirators named in the indictment and his intent to violate the law. The question to Mr. Barbato was only one of several pieces of evidence connecting Louis to the narcotics business of his father and other co-conspirators. In addition to the testimony of the chemist, the Government unsuccessfully sought to introduce a "theme" notebook (GX 14A) found in the attache case with the cocaine which recorded various marihuana and cocaine transactions. This "theme" notebook, essentially the "books" of this narcotics business with the names of the several co-conspirators, coupled with the proffered testimony of a handwriting expert, would have established Louis' knowledge of and participation in

[Footnote continued on following page]



there was no evidence connecting Louis Reda with marihuana dealing. On the other hand, the proof as to Gino Reda overwhelmingly established his extensive trading in marihuana as well as cocaine. (L. Tr. 59, 72, 157, 277-78, 280, 287-88, 338, 534; GX 16, 18). When Mr. Barbato was asked about any examinations of marihuana in this case, the jury were it to infer anything at all

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the charged conspiracy. After Judge Stewart's adverse ruling, the Government re-offered the notebook with the numbers and amounts redacted, simply to establish that Louis knew and had some form of business association with the co-conspirators. (L. Tr. 499-503). Judge Stewart refused even this. In addition, the Government sought to introduce testimony that Gino had told the agents that Louis had lost 2000 pounds of marihuana in Florida.

In light of the evidence adduced at trial as to the nature of Gino's narcotics business and the defense strategy adopted by Louis this evidence was highly probative. It demonstrated a connection between Louis and Gino in marihuana trading and established Louis' familiarity with Gino's narcotics business generally. Such a connection would have refuted the defense argument that Louis' behavior during the crucial days of August 23-24 was innocent and coincidental rather than knowing participation in the cocaine conspiracy. The marihuana connection and the notebook with the co-conspirators names in Louis' handwriting is compelling evidence of their association in narcotics transactions. *United States v. Natale*, 526 F.2d 1160, 1173-74 (2d Cir. 1975), *cert. denied*, 425 U.S. 950 (1976) (evidence of other usurious transactions before and during charged extortion conspiracy admissible to show background and development of conspiracy and nature of relationships). At the very least the notebook, with the amounts and figures redacted, should have been admitted into evidence simply to show that Louis knew and had some association with the other co-conspirators in Florida and Boston. *United States v. Ruiz*, 477 F.2d 918, 919 (2d Cir. 1973) (slip of paper with co-conspirator's name and number admitted to show the defendant knew the co-conspirator); *United States v. Ellis*, 461 F.2d 962, 970 (2d Cir. 1970) (address book admitted to show association between co-conspirators); *United States v. Garelle*, 438 F.2d 366, 369-70 & n.9 (2d Cir. 1970), *cert. denied*, 401 U.S. 967 (1971) (same).



from an unanswered question, could only have assumed the marihuana involved Gino, not Louis. Thus, the potential prejudice to Louis from the question was extremely remote. *United States v. Birnbaum*, 373 F.2d 250 (2d Cir.), *cert. denied*, 389 U.S. 837 (1967).

Defense counsel's own belief at trial that there was no real prejudice is reflected in his failure to seek any cautionary instruction following the Assistant's question, choosing instead to drop the matter after a motion for a mistrial was denied.\* (L. Tr. 444-45). In any event, Judge Stewart, in his charge, cautioned the jury to consider only "what you have heard from the witnesses. . . ." (L. Tr. 923). *United States v. Giddins*, 273 F.2d 843 (2d Cir.), *cert. denied*, 362 U.S. 971 (1960). See also *United States v. Papadakis*, 510 F.2d 287, 295 (2d Cir.), *cert. denied*, 421 U.S. 950 (1975); *United States v. Rivera*, 496 F.2d 952 (2d Cir. 1974). In a case where there was undisputed evidence of the seizure of large quantities of narcotics from Louis' apartment, this testimony cannot seriously be considered to have caused prejudice depriving Louis of a fair trial. In any event, the instruction by the trial court minimized any prejudice engendered by the statement.

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\*On the other hand, the defendant did request a cautionary instruction during the testimony of Agent Fernandez where, in response to the question on direct, "what else took place on that day (August 26, 1976)?" he said among other things that: "Special Agent Michael O'Connor located some additional drugs in the apartment."

The court sustained an objection to that comment, denied a motion for a mistrial and, at defense counsel's request, gave the jury a cautionary instruction to ignore the remark. (L. Tr. 372-73). The defendant admits that this answer does not constitute reversible error. (L. Br. 24-25).

**POINT III****The Trial Judge Properly Admitted The Cocaine Found in the Cardboard Box Seized From Gino Reda at the Time of his Arrest.**

Gino Reda attacks his conviction on the ground that the trial judge erroneously admitted the approximately one-half pound of cocaine seized from his person at the time of his arrest at LaGuardia Airport.\* Gino does not challenge the legality of his arrest. Nor does he dispute that the cardboard box, in which the cocaine was found, was properly seized incident to the arrest. The appellant's sole contention is that the properly seized box containing cocaine was opened and searched without a search warrant several hours later that same day in the United States Attorney's Office.

It is well established that when a valid arrest is made, the arresting officer may search the arrestee's person and the area within his immediate control for weapons and evidence. *Chimel v. California*, 395 U.S. 752, 762-63 (1969). At the time of his arrest at LaGuardia Airport, Gino Reda was carrying a cardboard box under his arm. The DEA Special Agent making the arrest pursuant to a valid arrest warrant was well within the scope of the *Chimel* search incident to arrest when he seized the package.

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\* Judge Stewart conducted a pre-trial suppression hearing on November 1, 1976 prior to admitting the cocaine into evidence. The court concluded that the seizure and the examination of the box's contents a few hours later was proper.



Although the package was not opened and examined until a few hours after Gino Reda's arrest, the seizure of the cocaine remains within the "incident to arrest" exception to the warrant requirement. In *United States v. Edwards*, 415 U.S. 800, 807 (1974) the Supreme Court upheld the search and seizure of a defendant's clothes conducted some time after his arrest and administrative processing. The Court stated:

Once the accused is lawfully arrested and is in custody, the effects in his possession at the place of detention that were subject to search at the time and place of his arrest may lawfully be searched and seized without a warrant even though a substantial period of time has elapsed between the arrest and subsequent administrative processing, on the one hand, and the taking of the property for use as evidence, on the other.

In *United States ex rel. Muhammad v. Mancusi*, 432 F.2d 1046, 1047 (2d Cir. 1970) (per curiam), cert. denied, 402 U.S. 911 (1971), the identical issue raised by appellant here was considered and rejected as "entirely frivolous." A briefcase in the possession of the defendant was seized at the time of his arrest, but was not opened and examined until later that day at FBI headquarters. The Court stated:

"Officers may indeed promptly conduct more thorough searches of an arrested person and of the personal effects in his possession at the time of his arrest at a more convenient place than the spot of arrest."

Permitting officers to conduct a more thorough search and examination of objects shortly after they have been legitimately seized incident to arrest is consistent with common sense. Delaying the examination of the properly

seized object imposes no greater interference upon the defendant's proprietary interest in the object already seized. *Chambers v. Maroney*, 399 U.S. 42, 51-52 (1970); *United States v. Frick*, 490 F.2d 666, 669-70 (5th Cir. 1973), *cert. denied*, 419 U.S. 831 (1974). An immediate and complete search at the time and place of the arrest could create an unnecessary abuse of personal dignity. *United States ex rel. Muhammed v. Mancusi, supra*. A contemporaneous search should not be construed to require immediacy. *United States v. Johnson*, 495 F.2d 378, 382 (4th Cir. 1974). A more thorough examination of an accused and his properly seized possessions is consistent with good police practice. *Abel v. United States*, 362 U.S. 217, 239 (1960); *United States v. Frankberry*, 387 F.2d 337, 339 (2d Cir. 1967) (*per curiam*); *United States v. Caruso*, 358 F.2d 184, 185 (2d Cir.), *cert. denied*, 385 U.S. 862 (1966).\*

The cases cited by appellant are not to the contrary. *Preston v. United States*, 376 U.S. 364 (1964) involved a post-arrest search of an automobile. The *Preston* decision has been limited to its unusual facts, *Cady v. Dombrowski*, 413 U.S. 433 (1973); *Cooper v. California*, 386 U.S. 58, 59-60 (1966); *United States v. Gravitt*, 484 F.2d 375, 379 n.4 (5th Cir. 1973), *cert. denied*, 414 U.S. 1135 (1974), and simply does not govern this case.

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\* Appellant's argument carried to its logical conclusion, would require that a chemist's analysis or a police officer's inventory of properly seized contraband only go forward upon a search warrant. *United States v. Gravitt*, 484 F.2d 375, 378-79 (5th Cir. 1973), *cert. denied*, 414 U.S. 1135 (1974).



## POINT IV

**The Property Seized From 1910 Hone Avenue  
Was Properly Received Pursuant To The Search  
Warrant and the Plain View Doctrine.**

The appellant Gino Reda contends that the search warrant for Louis Reda's apartment at 1910 Hone Avenue did not describe the items to be seized with sufficient particularity. This claim is frivolous.

The specificity requirement\* allows a certain flexibility, *United States v. Scharfman*, 448 F.2d 1352 (2d Cir. 1971), *cert. denied*, 405 U.S. 919 (1972), at least where first amendment rights are not involved. *Stanford v. Texas*, 379 U.S. 476 (1965). The warrant authorized seizure of:

"A quantity of cocaine hydrochloride, and other paraphernalia"

This description more than met the constitutional requirement for specificity.

During the course of the search the following items were seized and ultimately admitted into evidence at the defendant Gino Reda's two trials:

- three packages of cocaine, GX 3, 4 and 5;
- a black attache case, GX 14;
- a jar of lactose, GX 11;
- a roll-o-dex, GX 13;
- an "idea" 3" x 5" note pad, GX 14B;

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\* The fourth amendment provides:

"... no Warrants shall issue ... [unless] particularly describing the ... things to be seized."

- Miami-Bogota-Miami airline tickets, GX 14C & D;
- an Eastern Sprint envelope, GX 14E;
- New York to Boston Eastern Airlines shuttle boarding passes, a South American travel brochure and several flight schedules for New York to Boston, GX 14F;
- a large scale, GX 9;
- a Hanson dietetic gram scale, GX 10;
- a blue address book, GX 12.

Certainly there is no dispute that the approximately 250 grams of cocaine hydrochloride, (GX 3, 4 & 5), the jar of lactose (GX 11) and the scales (GX 9 & 10) fall within the express provisions of the warrant. As Judge Stewart noted in ruling on this issue after a pretrial suppression hearing, at least some of the other articles might also be fairly characterized as "other paraphernalia" of the cocaine business. (G. Tr. 118-19). The *attache* case in which the cocaine was transported and found (GX 14), the Eastern Sprint envelope in which the contraband and/or cash was shipped (GX 14E), the roll-o-dex (GX 13), address book (GX 12) and "idea" note pad (GX 14B) containing the names of co-conspirators all fall within the scope of "paraphernalia." *Spinelli v. United States*, 382 F.2d 871, 886, (8th Cir. 1967), *rev'd on other grounds*, 393 U.S. 410 (1969). The items to be seized were as precisely described as could be expected under the circumstances. *James v. United States*, 416 F.2d 467, 472-73 (5th Cir. 1969), *cert. denied*, 397 U.S. 907 (1970).

Regardless of the scope attributed to the phrase "other paraphernalia,"\* all of the items seized were properly ad-

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\* Webster's Third International Dictionary defines "paraphernalia" to include "articles of equipment: furnishings, apparatus."



mitted under the plain view doctrine. In searching for the cocaine, the agent examined the black attache case. (GX 14). Upon opening the attache case the "idea" note pad, (GX 14B), the airline tickets to Bogota, (GX 14C & D), the Eastern Sprint envelope, (GX 14E), the boarding passes, travel brochures and flight schedules were readily apparent (GX 14F). Similarly while looking for cocaine the agents came upon the roll-o-dex (GX 13), the address book (GX 12), the scales (GX 9 & 10) and the jar of lactose (GX 11). Knowing what they did about the defendants' narcotics conspiracy the agents had reason to believe that, while searching for cocaine and other paraphenalia, they had inadvertently come upon items which were instrumentalities or tools of crime or evidence of the crime, *Coolidge v. New Hampshire*, 403 U.S. 443 (1973) and as such, could be properly seized. *Harris v. United States*, 390 U.S. 234, 236 (1968); *United States v. Variano*, Dkt. No. 76-1335, slip op. 2295, 2305 (2d Cir., March 14, 1977); *United States ex rel. LaBelle v. IaVallee*, 517 F.2d 750, 755 (2d Cir. 1975), *cert. denied*, 423 U.S. 1062 (1976); *Warden v. Hayden*, 387 U.S. 294 (1967).

**CONCLUSION**

**The judgment of conviction should be affirmed.**

Respectfully submitted,

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# AFFIDAVIT OF MAILING

United States of America v. Gino Reda & Louis Reda, Dkt. No. 77-1062

State of New York )  
County of New York )

Robert N. Shwartz being duly sworn,  
deposes and says that he is employed in the office of  
the United States Attorney for the Southern District of  
New York.

That on the 4th day of May, 1977  
he served a copy of the within Brief for the United States  
by placing the same in a properly postpaid franked  
envelope addressed:

Bernard Alan Seider, Esq.  
401 Broadway  
Suite 604  
New York, New York 10013  
Attorney for Gino Reda

And deponent further says that he sealed the said envelope and placed the same in the mail drop for mailing the United States Courthouse, Foley Square, Borough of Manhattan, City of New York.

GLADYS D. D'ANGELO  
NOTARY PUBLIC, State of New York  
No. 52-4618641; Suffolk County  
Term Expires March 30, 1979

Robert N Shwartz

Sworn to before me this

41 day of May, 1977.



